Office Supreme Court, U. S.
FILED
JAN 23 1925
WM. R. STANSBURY
CLERK

Supreme Court of the United States.

October Term, [redacted] No. [redacted] 280

THE NEW YORK CENTRAL RAILROAD COMPANY and THE PENNSYLVANIA RAILROAD COMPANY,
Petitioners,

v.

THE NEW YORK AND PENNSYLVANIA COMPANY,
Respondent.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

THOS. RAEBURN WHITE,
700 West End Trust Building, Philadelphia, Pa.,
For Respondent.

International, 236 Chestnut St., Philadelphia.

IN THE

Supreme Court of the United States,

October Term, 1924. No. 791.

THE NEW YORK CENTRAL RAILROAD COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY,

Petitioners,

v.

THE NEW YORK AND PENNSYLVANIA COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The petition filed in this case prays the Court to issue its certiorari on the ground that the decision necessarily involves the interpretation of a Federal statute, *viz.:* The Transportation Act, 1920.

Without arguing the question whether this is sufficient reason for granting petitioners' prayer, we respectfully submit that the petition should be dismissed because the decision of the Supreme Court of Pennsylvania was, *inter alia,* placed upon a ground which does not involve the interpretation of any Federal statute.

This Court has repeatedly decided that if the judgment of a State court is based upon two grounds, one involving a Federal question and the other not, and the non-Federal question is independent of the Federal question and is broad enough to sustain the judgment, the judgment does not depend upon the Federal

question and this Court will, unless under extraordinary circumstances (not claimed here to exist) decline to entertain jurisdiction of the case.

Nickel v. Cole, 256 U. S. 222.

A brief reference to the uncontested facts and the opinion of the Supreme Court of Pennsylvania will make clear what has been indicated. This case had its inception before the Public Service Commission of the State of Pennsylvania, in the proceeding referred to in the petition, paragraph twelve, as Complaint Docket No. 3206. The contention of this respondent, The New York and Pennsylvania Company, in that proceeding was that a certain freight rate on coal, moving between two points within the State of Pennsylvania, was unreasonable and unlawful. The proceeding related in part to a rate in effect from March 1, 1920, to September 1, 1920, and therefore during the period of Federal guarantee. The defendants in that proceeding, petitioners here, challenged the power of the State Commission to pass upon the reasonableness or legality of the rate in effect during that period. It was contended that if the commission should assume to find the rate unreasonable or unlawful, this would in effect amount to a reduction of the rate, and it was contended that the State Commission had no power to reduce the rate until after the Interstate Commerce Commission had approved such reduction.

The real basis of this respondent's contention in the proceeding before the State Commission was not merely that the rate then in force was unreasonable, but that it was unlawful in that it had been wrongfully constructed upon a base rate which the commission itself had previously found unlawful.

It appears from the opinion of the Supreme Court of Pennsylvania, and from the record, that this was the fact, and it was the fact. In proceedings held

prior to Federal control, a rate upon coal moving between the same points had been found unlawful by the Public Service Commission, and a reduction had been directed; subsequently, during Federal control, in constructing a rate in obedience to general order No. 28, making a general increase in rates, the petitioners here unlawfully used as the base rate the rate which had been condemned by the Public Service Commission, and subsequently by the Supreme Court of Pennsylvania when the case came before it on appeal from a reparation order.

When, therefore, the petition which began these proceedings was filed before the Pennsylvania Commission, it was claimed that the rate was unlawful not only because unreasonably high, but also because it had been unlawfully constructed.

When these petitioners (respondent in that proceeding) defended by denying the power of the State Commission to hold the rate unlawful or unreasonable, this respondent replied, (1) that the prayer of the petition was not that the rate be reduced but that an unlawful rate be corrected, and that this was not a reduction of a rate within the meaning of the Transportation Act, 1920; (2) that this was a purely intrastate rate, not claimed to have any effect upon interstate rates, and, therefore, that the Transportation Act, 1920, did not apply to it, but that the State Commission had full power to deal with it.

The State Commission decided these issues in favor of this respondent, holding that it had complete jurisdiction over the question, that the rate was unlawful, and too high, and directed that it be reduced. The report of the commission concluded by stating that reparation would be awarded both upon shipments moving during the guarantee period, and upon later shipments, upon presentation of supporting data (Record in Supreme Court of Pa., pp. 9a, 18a.)

Under the Public Service Company Law of Pennsylvania (as is set forth in the opinion of the Supreme Court of Pennsylvania), the losing party in a proceeding before the Public Service Commission may take an appeal to the Superior Court of the State. If he does not take such appeal he is concluded as to all matters decided by the commission. These petitioners did not appeal. It follows that the decision of the commission was final as to its own power over the rate and as to the fact that the rate was unlawful and unreasonably high.

Subsequently, in accordance with the direction contained in the commission's report, this respondent filed a petition asking for reparation, setting forth the proceedings before the commission and alleging the number of tons which had moved during the period when the unreasonable rates were in effect. Reparation was awarded by the commission for shipments moving (1) during the period of Federal guarantee, and (2) for a period of about a year after the Federal guarantee period had terminated. (Record in Supreme Court of Pa., p. 24a.)

Petitioners paid the reparation awarded as to shipments moving after the guarantee period but refused to pay it on shipments moving between March 1, 1920, and September 1, 1920. Thereupon this respondent began a suit in the Court of Common Pleas of Clinton County, Pennsylvania, to recover the amount of the reparation awarded. Defendants in that case (petitioners here) filed an affidavit of defense in which they set up in effect but a single defense, namely: That the commission had no power or authority to make the order of reparation because (it was alleged) it had no power or authority to reduce rates on shipments moving during the guarantee period, without the approval of the Interstate Commerce Commission having been secured. There was no denial of any of the

facts in the statement of claim. The number of tons of coal moving and the rates at which they moved were admitted. Therefore, the only question involved was the power of the commission to award reparation without the approval of the Interstate Commerce Commission having been secured; and this in turn was based upon the claim that the State Commission had no power to reduce the rate without such approval of the Interstate Commerce Commission. To put it another way the defense was that the Pennsylvania Commission had unlawfully reduced the rate without the approval of the Interstate Commerce Commission.

It is apparent that if the State Commission did reduce the rate, such reduction was effected by its decision that the rate in question was unlawfully constructed and unreasonably high in the amount of ten cents a ton, followed (in the same proceeding) by an order or direction that reparation would be awarded when supporting data had been produced.

It therefore seems to us too clear for discussion that, if the defendants in that proceeding disagreed with the conclusion of the commission that it had the power to decree the rate to be unlawful and unreasonably high, without securing the approval of the Interstate Commerce Commission, they should have appealed from the decision of the commission, and that having failed to so appeal, they could not raise the same questions over again in a suit for reparation which was necessary only for the purpose of proving the amount of the shipments, all other questions having already been decided by the commission.

Upon this view of the case the plaintiff in that case (this respondent), took a rule for judgment for want of a sufficient affidavit of defense, which the Court of Common Pleas of Clinton County made absolute. Petitioners thereupon appealed to the Supreme Court of Pennsylvania, and that Court affirmed the judg-

ment of the Court of Common Pleas upon the ground, *inter alia,* that by their failure to appeal from the first decision of the State Commission petitioners had precluded themselves from again raising the questions they sought to raise in the reparation proceedings, and upon the appeal to the Supreme Court.

The opinion of the Supreme Court of Pennsylvania deals principally with this question, and clearly decides that the judgment must be affirmed because petitioners were no longer in a position to raise the questions which they sought to argue.

The opinion also discussed other questions, such as the application of the Transportation Act, 1920, to the shipments in question, but, as already indicated, the first point was sufficient to decide the case, and indeed the opinion of the Supreme Court indicates that it was the principal ground upon which the case was in fact decided.

Even if this Court should be of opinion that the Supreme Court of Pennsylvania misinterpreted the Public Service Company Law of Pennsylvania, or was wrong in its conclusion that the issues presented in the reparation proceeding had been decided in the first proceeding (except in so far as they were conceded), nevertheless the same conclusion would result, for this Court has repeatedly held that even though it might disagree with the decision of the Supreme Court of the State in interpreting a local statute, or in interpreting the issues in a particular case, that the judgment of the State Court will be accepted and that no Federal question is thereby presented.

Enterprise Irrig. Dist. v. Canal Co., 243 U. S. 157, 164;
Howat v. Kansas, 258 U. S. 181, 186;
Nickel v. Cole, 256 U. S. 222.

It is therefore, respectfully submitted that no ground has been laid for the application to the Court to issue its writ of certiorari in this case, and that the petition should be dismissed.

Respectfully submitted,

T. R. WHITE,
For Respondent.